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City Document. — *No.* 69.

CITY OF BOSTON.

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MAYOR'S MESSAGE,

Giving His Reasons for not Approving the Order Concerning the Opening of the

PUBLIC LIBRARY ON SUNDAY.

In Common Council, June 20, 1872.

Read, laid on the table, and ordered to be printed with the accompanying order.

W. P. GREGG,
Clerk of the Common Council.

B. M.
Nov. 18. 1893

CITY OF BOSTON.

EXECUTIVE DEPARTMENT,
CITY HALL, BOSTON, June 20, 1872.

TO THE COMMON COUNCIL: —

An order of the City Council, which originated in your Board, requesting the Trustees of the Public Library "to open the reading-room of the Public Library and to permit the use of books and periodicals therein on Sundays, between the hours of two o'clock P. M. and nine o'clock P. M.," has been presented to me for my official approval.

The subject presented by the order is one of great importance, and one upon which persons of high character and great intelligence have held diverse opinions. Before inaugurating a movement which is so much opposed to the practice of our people during our entire history, and which may involve in its ultimate results matters of more importance than the opening of the Library, it is well to be assured that we shall thus be travelling in the path of true progress, and that we shall thus be promoting the secular and religious interests of the community. I cannot, however, enter upon this field of inquiry without first encountering two preliminary considerations, both of importance, and one, I think, so conclusive, as to render any discussion of the main question at this time entirely useless.

The first of these considerations is the fact, that the City Council have by an ordinance given to the Trustees "the general care and control of the Public Library." Fortunately,

the persons who constitute this Board are gentlemen of great intelligence, fully competent, and doubtless entirely willing to meet and perform the important obligations and duties which their offices impose upon them. They have the power (of which the City Council have by this ordinance to a large extent dispossessed themselves) of controlling the Library. If such a measure as is proposed be legal, and one which the true religious and secular interests of the community demand, they will undoubtedly, in the exercise of the power which they possess, adopt it, and they will not desire to shelter themselves from their just and proper responsibilities behind an order of the City Council. If the measure proposed be in violation of law, then the Trustees cannot adopt it, even though the City Council may request them to do so. I think we may safely assume that the Trustees will, without prompting, faithfully perform all the duties with which they have been entrusted, and that therefore the whole subject may be properly left with them.

The other consideration, to which I have alluded, is the illegality of the proposed measure. This consideration alone would, whatever might be my views of the main question, constrain me to withhold my approval of the order. On this subject I have sought information from the very able and experienced lawyer whom the City Council have wisely selected for their guide and for my guide in legal matters. I refer to the City Solicitor. His opinion is, that the opening of the Library for public use on Sundays would conflict with a statute of the Commonwealth. I transmit herewith a copy of his opinion.

This matter of the opening of the Library on Sundays has been the subject of legislative and of previous municipal inquiry and discussion. I understand that several attempts have been made in the Legislature to repeal or modify

the statute, all of which have failed. I infer from the legislative discussions and from this failure, that the Legislature have not only regarded the proposed action as illegal, but also have believed that it would be against public policy to repeal the law.

I learn from the City Records that in the year 1865 a like order was adopted by the City Council, and was vetoed by one of my predecessors; that in the year 1867 the subject was again brought to the attention of the City Council, and was referred to a very intelligent committee, who, after obtaining the opinion of the City Solicitor, recommended that "no further action be taken on the subject." This, so far as my knowledge extends, was the first time that the legal question was raised. The committee say in their report that, "in the course of the deliberations, the legal point was suggested, that the City Council could not authorize the opening of any portion of the Library under the provisions of the statute forbidding all works on Sunday, save those 'of necessity and charity.' Wishing to solve this question in the only proper manner known to the ordinances, your committee at once consulted the City Solicitor, who, after a thorough examination of the subject, and strengthened in opinion by consultation with eminent jurists, returned the following official answer to the committee's inquiry." The answer alluded to is contained in the opinion of the City Solicitor, dated July 25, 1867, a copy of which is transmitted herewith. In 1870 the subject was again considered by the City Council. I desire to call your attention to portions of the able report made by the committee to whom the subject was at that time referred. The committee say that, "a member of the committee having addressed an inquiry to the City Solicitor, received the following reply: —

"'There has been no change in the statutes, nor any late decision of Court, affecting the question of opening the Pubilc

Library on Sundays. My opinion upon the subject has not been changed since I gave expression to it as published in City Document No. 75, of the year 1867.'

"Perhaps that opinion receives some corroboration by the action of the Legislature at its present session. A bill was introduced, discussed and rejected, to authorize the opening of libraries on Sundays. If the law already permitted it, any action by the Legislature, such as was sought, would have been unnecessary; and the debates upon the subject, so far as I read reports of them, proceeded upon the theory that libraries could not be opened on Sundays without a violation of the law."

The committee in their report also say, "Although a majority of the committee are decidedly of opinion that it would be highly beneficial, both in a moral and an educational point of view, to open the Library to the public on Sundays, they do not feel it would be judicious to recommend the opening while the legality of such a step is questionable. The strong opposition to any change in the present arrangements, on the part of many influential citizens, on account of what they regard as a tendency to violate the proper observance of the Lord's Day, makes it necessary on the part of those who favor this change, that they should remove any doubts which might be cast upon the legality of their proceedings, lest their action should prove detrimental to the best interest of the institution whose benefits they wish to enlarge.

"The committee have therefore concluded to recommend the passage of the accompanying order, requesting the Mayor to petition the Legislature, at its next session, for such a modification of the statutes relating to the observance of the Lord's Day as will authorize the City of Boston to open the Public Library for use on that day.

"*Ordered*, That His Honor the Mayor be requested to petition the Legislature, at its next session, for authority to open the Public Library, in the City of Boston, or any branches thereof, for the use of the citizens on Sundays."

In pursurance of this order a petition was presented to the Legislature, and after a full consideration, of the matter the authority sought for was refused; and the next action of the City Council after that refusal was the present order, which contains a request to the Trustees of the Public Library to do what the Legislature refused to give the city authority to do.

This order, if approved, places the city in a position of at least seeming disregard and defiance of a statute of the Commonwealth. Such a position would be one of evil example, and one which I think the great majority of the citizens would be unwilling to have the city occupy.

I withhold with great reluctance my official approval of a measure which I know the City Council have with much deliberation and with an earnest desire to promote the best interests of the citizens adopted; but I think that the City Council cannot fail to perceive that with such an opinion from the legal adviser of the city, fortified by that of other "eminent jurists," and with such a previous legislative and municipal history of the question, any one occupying my position, would, whatever might be his own individual views or wishes, find himself in a position of singular embarrassment in attempting to justify the approval of an order like the one under consideration.

Believing, for these reasons, that the request contained in the order is one which the City Council ought not to make, and one which the Trustees of the Public Library ought not to grant, I respectfully return to you the order, without my approval.

WM. GASTON, *Mayor*.

City Solicitor's Office, 2 Pemberton Square.

Boston, June 14, 1872.

Sir, — The question which you proposed to me, namely, — "Whether the opening of the Public Library for use on Sundays would be a violation of any statutory provisions of this Commonwealth?" is one which I have heretofore had occasion to examine, and on which I have already expressed an opinion.

In the year 1867, while the subject of opening the Library for use on Sundays was under discussion in the City Council, the joint Committe on the Library requested my opinion upon the legality of the action then proposed to be taken in the premises; and after careful consideration of the questions they submitted to me, I returned to the Committee an opinion, a copy of which I herewith transmit.

The opinion I then formed and expressed remains unchanged, although the agitation of the same subject has made it necessary for me to re-examine it at different times since it was given.

I have the honor to be, with great respect,

Your obedient servant,

J. P. HEALY.

To His Honor the Mayor.

[copy.]

City Solicitor's Office, 46 Court Street.

Boston, July 25, 1867.

Sir, — Your communication was received proposing to me the following questions, in behalf of the Committee on the Public Library, viz.: —

1. "Would the opening of the Public Library of the City of Boston, or any portion thereof, for public use on Sundays, violate, in letter or spirit, any statute of the Commonwealth for the proper observance of the Sabbath Day?"

2. "Would an order of the City Council, so to open said Library on Sundays, subject any officers employed in said Library to legal prosecution for violation of the statute of the Commonwealth which prohibits all work on the Sabbath Day, except that of necessity or charity?"

The General Statutes, Chap. 84, Sects. 1 and 2, prohibit under a penalty the keeping open of any "shop, warehouse or work-house" — the doing of "any manner of labor, business or work, except works of necessity or charity," and travelling, except from necessity or charity, on the Lord's Day.

Construing these provisions in the light of the judicial decisions upon them, I am of the opinion that the opening of the Library for public use on Sundays would conflict with the statute; that such use does not come within the meaning of either of the words of the exception, necessity or charity; and that persons who should conduct the Library for public use on Sundays would be subject to the penalty provided by the statute.

Very respectfully, your obedient servant,

J. P. HEALY.

ALDERMAN GAFFIELD, *of the Com'tee on the Public Library.*

Ordered, That the Trustees of the Public Library be requested to open the reading room of the Public Library and permit the use of the books and periodicals therein, on Sundays, between the hours of two o'clock, P. M., and nine o'clock, P. M.

City of Boston,
In Common Council, May 16, 1872.

Passed. Sent up for concurrence.

M. F. DICKINSON, Jr.,
President.

In Board of Aldermen, June 10, 1872.

Concurred.

S. LITTLE,
Chairman.